IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Second Appeal No. 691/2001
(Old No. 1554/1986)

1- Shamshad Husain –deceased.
S/o Ashfaq Husain
1/1. Smt. Muzammil W/o late Shamshad Husain
½. Shahzad Alam
1/3. Irteshad Alam
¼. Aliqad Alam
1/5. Alam Jahan
1/6. Afsar Alam
1/7. Kahkashan Alam
1/8. Gulbahar Alam,
sons and daughters of late Shamshad Hussain, all R/o Mohalla Maheshpura Tehsil Kashipur,
District Nainital .. Defendant/Appellants.

Versus

Smt. Hasrat Begum
W/o Abdul Hameed,
R/o Mohalla Ganj, Tehsil Kashipur,
District Nainital. .. Plaintiffs/Respondents.

Mr. P.C. Bisht, Advocate for the appellants.
Mr. Afsar Ali, Advocate for the respondents.

Hon'ble Mr. Justice B.C. Kandpal, J.:

This Second Appeal, U/S 100 C.P.C., has been preferred against the judgment and decree dated 30-5-1986, passed by Additional Civil Judge, Nainital in Civil Appeal No. 110 of 1984, arising out of original suit No. 28/1983, by which the appeal was dismissed and the judgment and decree dated 8-10-1984 of the trial court was affirmed.

2- Perusal of the record shows that the plaintiff/respondent filed a suit for eviction of the defendant/appellant from the property in dispute. According to the plaintiff/respondent she was tenant in the property shown with letters Aa, Ra, Na, Da, Sa, Ba, La. The defendant/appellant, who is relative of her

husband, was allowed to reside in a portion of the house shown with letters Sa, Da, Na, Jha in the plaint map. On 23-7-76 she purchased the premises shown with letters Sa, Da, La, Ba, in the plaint map and became owner of the same and in the remaining portion of the property shown with letters Aa, Ra, Na, La, she was tenant of Munsif Ram Sant. The defendant was asked to vacate the premises but he did not vacate the house, and filed Suit No. 49 of 1977 for permanent injunction against the husband of the plaintiff/respondent, in which the defendant was held as licensee and the suit was decreed. Thereafter, she filed suit No. 8 of 1979 for eviction of defendant from the premises Sa, Da, Na, Jha which was decreed. In execution proceedings the disputed premises was handed over to the plaintiffs/respondent. According to the plaintiffs/respondents there exists Sahan La, Na, Jha, Ba, which is part of disputed property. Although the defendant was also dispossessed from use of the said Sahan Land but he threatened again to take possession of the Sahan, hence the suit was filed for permanent injunction restraining the defendant/appellant not to interfere with the peaceful possession of the plaintiffs over Sahan.

3- The defendant/applicant filed written statement and alleged that the disputed land has not been in the use of the plaintiff as Sahan. Rather he has alleged that the land is in his possession for the last 40 years. It was firstly in the possession of his father and thereafter he constructed latrine, bathroom, kitchen and store on the disputed land. The dispute between the parties has already been settled and the suit is barred by the principle of Res judicata.

4- The trial court framed relevant issues. Thereafter parties adduced evidence in the case. The trial court after hearing learned counsel for the parties and perusing the record decree the suit for the eviction of the defendant from the disputed land.

5- Against the aforesaid judgment and decree the defendant/appellant filed appeal before the Addl. Civil Judge, Nainital, which was dismissed by the lower appellate court, vide impugned judgment and decree dated 30-5-1986.

6- Feeling aggrieved, the defendant has filed this second appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

7- Heard learned counsel for the parties and perused the record.

8- Having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that this second appeal is concluded by concurrent finding of facts. Therefore, I do not find any ground to interfere in the impugned judgments and orders passed by the courts below. Both the courts below have recorded concurrent finding of facts, which cannot be interfered at the stage of second appeal. I also do not find any substantial question of law involved in this case.

9- The appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated: October 28, 2006
ISB